IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO.867 OF 2000

IN

JUDGE'S SUMMONS NO.224 OF 1999

IN

COMPANY APPLICATION NO.152 OF 1999

Jagmohansingh Arora and ors. ...Appellants

v/s

Aviat Chemicals Pvt.Ltd. ...Respondents

Mr Z. Andhyarujina with Mr Hitesh Jain I/b M/s Thakordas and Madgavkar for Appellants.

Mr Janak Dwarkadas with Mr Kamal Khata i/b Ms Dhru and Co. for Respondents.

CORAM : D.K. DESHMUKH AND J.H. BHATIA JJ.

DATE : 2ND AUGUST 2007.

P.C. :-

1. By this appeal, the appellants challenge the order dated 17th April 2000 passed by the learned Single Judge of this Court in Judge's Summons No.224 of 1999. by that order, the learned Single Judge has directed the appellants to pay an amount of Rs.1,22,77,000/- as and by way of damages. It appears that the appellants had taken out proceedings objecting to the order of the Court sanctioning of scheme of amalgamation of two companies and had secured an order of injunction, as a result of which according to the respondents, despite completion of the process of amalgamation, manufacturing could not be completed. The objection raised by the appellants to the amalgamation failed and that order was confirmed by the Supreme Court. Thereafter, proceedings were started for recovery of damages because the appellants had given an undertaking to the Court as required by the Rules that in case it is found that they were not justified in securing the order of injunction, they will be liable to make good any loss that would be suffered by the respondents because of the operation of the injunction order. Judge's summons No.224 of 1999 was therefore taken out by the respondents for direction to the appellants to pay an amount of Rs.1,22,77,000/- on account of loss of profit and loss of reputation,

goodwill and legal cost. That Judge's Summons was decided by the learned Single Judge of this Court by order dated 24th January 2000. The learned Single Judge rejected the objections raised on behalf of the appellants. The learned single Judge referred the matter to the Commissioner for Taking Accounts for submitting report to the Court on assessment of the damages. The appellants were also permitted to appear before the Commissioner for Taking Accounts but their right to participate was subject to the condition that they deposit an amount of Rs.5,00,000/- in the Court. It appears that against this order, the appellants filed an appeal before the Appeal Court but before that appeal could be decided, the process of assessment by the Commissioner was over and therefore ultimately that appeal was disposed off as infructuous. In proceedings before the Commissioner for Taking Accounts, the appellants did not appear because the appellants did not deposit the amount of Rs.5,00,000/- which was condition precedent for their entitlement to participate in the proceedings before the Commissioner. Ultimately, the Commissioner submitted his report and on the basis of that report, the learned Single Judge passed order dated 17th April 2000 referred to above. When the learned Single Judge passed that order, the appellants did not appear before the learned Single Judge. The order dated 17th April 2000 passed by the learned Single Judge is

challenged in this appeal. It appears, the order dated 17th April 2000 has been corrected by two orders, one dated 22nd June 2000 and other dated 14th July 2000. Thus, in this appeal, it is the order of the learned Single Judge directing the appellants to pay amount of damages to the respondents is challenged.

2. The learned counsel appearing for appellants submits that though the appellants were not justified in not depositing the amount of Rs.5,00,000/- and not participating in the proceedings before the Commissioner for Taking Accounts, according to him, perusal of the report of the Commissioner shows that it is one sided report and the amounts have been arrived at by the Commissioner without adopting any scientific basis for calculating the amount. We have heard learned counsel appearing for respondents. After having gone through the record, we find that the report of the Commissioner is completely one sided and that it is presumably so because the appellants did not participate in the proceedings before the Commissioner. The appellants have already deposited Rs.25,00,000/- in this appeal. Before us, the appellants have agreed to deposit the more amounts. In our opinion, considering that what the appellants are required to pay is the amount of damages and as the appellants are willing to deposit amounts in the Court, it will be in the interest of justice to

permit the appellants to participate in the process of assessment and awarding of damages. In our opinion, following order would meet the ends of justice.

3. In addition to the amount of Rs.25,00,000/- which the appellants have already deposited when this appeal was admitted, the appellants shall within a period of four weeks from today, deposit a further amount of Rs.15,00,000/-. This amount shall be invested in fixed deposit in a nationalised bank during the pendency of further proceedings. The appellants shall also deposit an amount of Rs.5,00,000/- within a period of four weeks from today, which amount shall also be invested in a nationalised bank in fixed deposit. On the deposits being made, the orders of the learned Single Judge impugned in this appeal shall stand set aside. (The order of the learned Single Judge dated 17th April 2000 and the orders referred to above correcting this order passed by the learned Single Judge shall stand set aside.) As the appellants are depositing an amount of Rs.5,00,000/- which they were directed to deposit pursuant to the order dated 24th January 2000, the appellants shall be entitled to participate in the process before the Commissioner for Taking Accounts. The Commissioner for Taking Accounts is directed to take up the process of assessment of the amount of damages pursuant to the order dated 24th January 2000. The

Commissioner for Taking Accounts shall permit the respondents and the appellants to place additional material before him and shall grant them requisite opportunity of being heard and shall make a fresh report in terms of the order dated 24th January 2000. On the report being submitted, the respondents shall be at liberty to move Judge's Summons No.224 of 1999 before the learned Single Judge for appropriate orders. The Commissioner for Taking Accounts shall complete the enquiry and submit the report within a period of eight weeks from the date on which the appellants deposit the amounts as per this order. In case the appellants do not deposit the amounts within the aforesaid period, the Office shall treat this appeal as dismissed. In that event, the respondents shall be entitled to withdraw the amount with accruals if any, which has been deposited by the appellants pursuant to the earlier order passed in this appeal. Appeal is disposed off.

. Parties to act on the copy of this order duly authenticated by the Associate / Private Secretary as true copy.

. Certified copy expedited.

(JUSTICE D.K. DESHMUKH)

(JUSTICE J.H. BHATIA)